

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A TAX CREDIT FOR A TAXPAYER WHO DONATES
5 AN INTEREST IN LAND FOR A CONSERVATION EASEMENT; ESTABLISHING THE FAIR MARKET VALUE
6 OF THE LAND AS THE BASIS FOR THE CREDIT; LIMITING THE CREDIT TO \$100,000 FOR EACH
7 DONATION; AMENDING SECTIONS 15-30-121 AND 15-31-114, MCA; AND PROVIDING AN IMMEDIATE
8 EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11

12 NEW SECTION. **Section 1. Credit for donation of conservation easement -- exception --**
13 **limitations.** (1) (a) Subject to the conditions of this section, there is a credit against the taxes otherwise
14 due under this chapter for a taxpayer who donates a conservation easement to a public body or qualified
15 private organization as provided under Title 76, chapter 6, part 2. A corporation, an individual, a small
16 business corporation, a partnership, a limited liability partnership, or a limited liability company qualifies
17 for the credit under this section.

18 (b) The credit allowed under this section may not be claimed by a taxpayer who derives less than
19 60% of the taxpayer's gross income, as defined in 15-30-101 or 15-31-113, from farming or ranching
20 operations, or both.

21 (2) The amount of the credit is equal to the fair market value of the donated portion of the
22 conservation easement. Except as provided in subsection (7), the amount of the credit may not exceed
23 \$100,000 for each donation.

24 (3) To qualify for the credit, the taxpayer shall file a certified appraisal prepared by a certified
25 general real property appraiser with the department at the same time as the taxpayer files a return for the
26 tax year in which the credit is claimed.

27 (4) The credit allowed under this section for a tax year may not exceed the tax liability under
28 chapter 30 or 31. A credit may not be refunded if a taxpayer has tax liability less than the amount of the
29 credit.

30 (5) The credit allowed under this section may be used as a carryforward against taxes imposed

1 under chapter 30 or 31 for the 20 succeeding tax years. The entire amount of the tax credit not used in
2 the year earned must be carried forward to the earliest tax year in which the credit may be applied and
3 then to each succeeding tax year. Any amount of the credit that is not used after the carryforward period
4 is not refundable.

5 (6) If the credit is claimed by a small business corporation, a partnership, a limited liability
6 partnership, or a limited liability company, the credit must be attributed to the individual shareholders,
7 partners, members, or managers in the same proportion used to report income or loss for state tax
8 purposes.

9 (7) A taxpayer may claim only one tax credit under this section each tax year. A taxpayer who
10 has carried forward part of the tax credit pursuant to subsection (5) may not claim an additional credit
11 under this section in any tax year in which the taxpayer applies the amount carried forward against taxes
12 due.

13 (8) A deduction or a credit is not allowed under any other provision of chapter 30 or 31 with
14 respect to any amount for which a credit is claimed under this section.

15

16 NEW SECTION. Section 2. Credit for donation of conservation easement. There is a credit against
17 the taxes otherwise due under this chapter allowable for the donation of a conservation easement. The
18 credit must be determined in accordance with [section 1].

19

20 **Section 3.** Section 15-30-121, MCA, is amended to read:

21 **"15-30-121. Deductions allowed in computing net income.** (1) In computing net income, there
22 are allowed as deductions:

23 (a) the items referred to in sections 161, including the contributions referred to in
24 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954 (26 U.S.C. 161 and 211), or as sections
25 161 and 211 are labeled or amended, subject to the following exceptions, which are not deductible:

26 (i) items provided for in 15-30-123;

27 (ii) state income tax paid;

28 (iii) premium payments for medical care as provided in subsection (1)(g)(i);

29 (iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii);

30 (v) a charitable contribution that qualifies for a deduction under section 170 of the Internal

1 Revenue Code related to the value of an interest in land donated as a conservation easement for which
2 a credit is claimed pursuant to [section 1]:

3 (b) federal income tax paid within the tax year;

4 (c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through
5 (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through
6 (1)(c)(vi), as follows:

7 (i) expenses for household and dependent care services necessary for gainful employment incurred
8 for:

9 (A) a dependent under 15 years of age for whom an exemption can be claimed;

10 (B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross
11 income do not apply, who is unable to provide self-care because of physical or mental illness; and

12 (C) a spouse who is unable to provide self-care because of physical or mental illness;

13 (ii) employment-related expenses incurred for the following services, but only if the expenses are
14 incurred to enable the taxpayer to be gainfully employed:

15 (A) household services that are attributable to the care of the qualifying individual; and

16 (B) care of an individual who qualifies under subsection (1)(c)(i);

17 (iii) expenses incurred in maintaining a household if over half of the cost of maintaining the
18 household is furnished by an individual or, if the individual is married during the applicable period, is
19 furnished by the individual and the individual's spouse;

20 (iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following
21 limitations:

22 (A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred
23 during the year only to the extent that the expenses do not exceed \$4,800;

24 (B) expenses for services in the household are deductible under subsection (1)(c)(i) for
25 employment-related expenses only if they are incurred for services in the taxpayer's household, except
26 that employment-related expenses incurred for services outside the taxpayer's household are deductible,
27 but only if incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to
28 the extent that the expenses incurred during the year do not exceed:

29 (I) \$2,400 in the case of one qualifying individual;

30 (II) \$3,600 in the case of two qualifying individuals; and

(III) \$4,800 in the case of three or more qualifying individuals;

(v) if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by one-half of the excess of the combined adjusted gross income over \$18,000;

(vi) for purposes of this subsection (1)(c):

(A) married couples shall file a joint return or file separately on the same form;

(B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:

(I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);

(C) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(D) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(d) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code (now repealed) that were in effect for the tax year ended December 31, 1978;

(e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

(f) contributions to the child abuse and neglect prevention program provided for in 41-3-701, subject to the conditions set forth in 15-30-156;

(g) the entire amount of premium payments made by the taxpayer, except premiums deducted in determining Montana adjusted gross income, or for which a credit was claimed under 15-30-128, for:

(i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer; and

(ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified

1 long-term care services, as defined in 26 U.S.C. 7702B(c), for:

2 (A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or

3 (B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of
4 the taxpayer for tax years beginning after December 31, 1996;

5 (h) contributions to the Montana drug abuse resistance education program provided for in
6 44-2-702, subject to the conditions set forth in 15-30-159; and

7 (i) light vehicle registration fees, as provided for in 61-3-560 through 61-3-562, paid during the
8 tax year.

9 (2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care
10 home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's
11 own child and at least one unrelated child in the ordinary course of business may deduct
12 employment-related expenses considered to have been paid for the care of the child.

13 (b) The amount of employment-related expenses considered to have been paid by the taxpayer
14 is equal to the amount that the taxpayer charges for the care of a child of the same age for the same
15 number of hours of care. The employment-related expenses apply regardless of whether any expenses
16 actually have been paid. Employment-related expenses may not exceed the amounts specified in
17 subsection (1)(c)(iv)(B).

18 (c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the
19 deduction under this subsection (2). (Subsection (1)(h) terminates on occurrence of contingency--sec. 12,
20 Ch. 808, L. 1991.)"

21

22 **Section 4.** Section 15-31-114, MCA, is amended to read:

23 **"15-31-114. Deductions allowed in computing income.** (1) In computing the net income, the
24 following deductions are allowed from the gross income received by the corporation within the year from
25 all sources:

26 (a) all the ordinary and necessary expenses paid or incurred during the ~~taxable~~ tax year in the
27 maintenance and operation of its business and properties, including reasonable allowance for salaries for
28 personal services actually rendered, subject to the limitation contained in this section, and rentals or other
29 payments required to be made as a condition to the continued use or possession of property to which the
30 corporation has not taken or is not taking title or in which it has no equity. A deduction is not allowed for

1 salaries paid upon which the recipient has not paid Montana state income tax. However, when domestic
2 corporations are taxed on income derived from outside the state, salaries of officers paid in connection
3 with securing the income are deductible.

4 (b) (i) all losses actually sustained and charged off within the year and not compensated by
5 insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of
6 property used in the trade or business. The allowance is determined according to the provisions of section
7 167 of the Internal Revenue Code in effect with respect to the ~~taxable~~ tax year. All elections for
8 depreciation must be the same as the elections made for federal income tax purposes. A deduction is not
9 allowed for any amount paid out for any buildings, permanent improvements, or betterments made to
10 increase the value of any property or estate, and a deduction may not be made for any amount of expense
11 of restoring property or making good the exhaustion of property for which an allowance is or has been
12 made. A depreciation or amortization deduction is not allowed on a title plant as defined in 33-25-105(15).

13 (ii) There is allowed as a deduction for the taxable period a net operating loss deduction determined
14 according to the provisions of 15-31-119.

15 (c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable
16 allowance for depletion and for depreciation of improvements. The reasonable allowance must be
17 determined according to the provisions of the Internal Revenue Code in effect for the ~~taxable~~ tax year. All
18 elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and
19 development costs and intangible drilling expenses for corporation license tax purposes must be the same
20 as the elections made for federal income tax purposes.

21 (d) The amount of interest paid within the year on its indebtedness incurred in the operation of
22 the business from which its income is derived. Interest may not be allowed as a deduction if paid on an
23 indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of
24 business unless the income from the property or business would be taxable under this part.

25 (e) (i) taxes paid within the year, except the following:

26 (A) taxes imposed by this part;

27 (B) taxes assessed against local benefits of a kind tending to increase the value of the property
28 assessed;

29 (C) taxes on or according to or measured by net income or profits imposed by authority of the
30 government of the United States;

(D) taxes imposed by any other state or country upon or measured by net income or profits.

(ii) Taxes deductible under this part must be construed to include taxes imposed by any county, school district, or municipality of this state.

(f) that portion of an energy-related investment allowed as a deduction under 15-32-103;

(g) (i) except as provided in subsection (1)(g)(ii) and (1)(g)(iii), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, as amended.

(ii) The public service commission may not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

(iii) A taxpayer may not deduct the value attributable to an interest in land donated as a conservation easement for which a credit is claimed pursuant to [section 1].

(2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2)(b).

(3) In the case of a regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or 851(h) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, except that the deduction for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax under this chapter when earned by the regulated investment company. For the purposes of computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered, apply. A regulated investment company is not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal

1 Revenue Code of 1986, as those sections may be amended or renumbered."

2

3 NEW SECTION. **Section 5. Codification instruction.** (1) [Section 1] is intended to be codified as
4 an integral part of Title 15, chapter 31, part 1, and the provisions of Title 15, chapter 31, part 1, apply
5 to [section 1].

6 (2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and
7 the provisions of Title 15, chapter 30, part 1, apply to [section 2].

8

9 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

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11 NEW SECTION. **Section 7. Retroactive applicability.** [This act] applies retroactively, within the
12 meaning of 1-2-109, to tax years beginning after December 31, 2000.

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- END -